

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA,)	
Plaintiff-Respondent,)	
)	
v.)	02-CR-30012-MAP
)	11-CV-30218-MAP
BERNIE RUIZ)	
Defendant-Petitioner)	

MEMORANDUM AND ORDER REGARDING
CERTIFICATE OF APPEALABILITY

September 21, 2012

PONSOR, U.S.D.J.

On June 18, 2012, this court issued its Memorandum regarding Defendant's Motion for Sentence Reduction and Motion to Vacate (Dkt. Nos. 68 & 80). The case had previously been remanded by the Court of Appeals for the First Circuit for consideration as to whether Defendant was entitled to a reduction of his 300-month sentence in light of Freeman v. United States, 131 S.Ct. 2685 (2011). In the court's June 18 memorandum, it concluded that Defendant was not entitled to a reduction because the 300-month sentence imposed on July 2, 2003 was not in any sense "based on" the crack cocaine sentencing guidelines.

Defendant filed a notice of appeal, and on September 12, 2012 the First Circuit Court of Appeals asked this court to issue or deny a Certificate of Appealability as to the

portion of the court's June 18, 2012 order that denied the motion to vacate.

The court hereby declines to issue any Certificate of Appealability. The court's decision that its sentence was not "based on" the crack cocaine guidelines is not subject to dispute by jurists of reason. Under these circumstances, issuance of a Certificate of Appealability would be improper.

It is So Ordered.

/s/ Michael A. Ponsor
MICHAEL A. PONSOR
U. S. District Judge